

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of San Gabriel Water Company, Fontana District (U337W) for Authority to Increase Rates Charged for Water Service in its Fontana Water Company Division to Increase revenues by: \$11,573,200 or 39.1% in 2003, \$3,078,400 or 7.3% in 2004, \$3,078,400 or 6.8% in 2005, \$3,079,900 or 6.4% in 2006.

Application No. 02-11-044
(Reopened July 29, 2005)
(Rehearing)

In the Matter of the Application of San Gabriel Valley Water Company (U337W) for Authority to Increase Rates Charged for Water Service in its Fontana Water Company Division by \$5,662,900 or 13.1% in July 2006; \$3,072,500 or 6.3% in July 2007; and \$2,196,000 or 4.2% in July 2008.

Application 05-08-021
(Filed August 5, 2005)

**CLOSING REHEARING BRIEF
OF THE OFFICE OF RATEPAYER ADVOCATES**

Travis T. Foss
Staff Counsel

Attorney for the Office of
Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1998
Fax: (415) 703-2262

December 7, 2005

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. SG CANNOT DEMONSTRATE THAT ANY EXCEPTION TO THE EXISTING BURDEN OF PROOF IS WARRANTED	3
A. D. 05-08-041 DOES NOT CREATE A NEW STANDARD FOR BURDEN OF PROOF	3
B. ANY “DELAYS AND COMPLEXITY” WERE CREATED BY SG’S OBFUSCATION AND REFUSAL TO PROVIDE TIMELY RESPONSES TO DATA REQUESTS; BY THEMSELVES, DELAY AND COMPLEXITY DO NOT CONSTITUTE A “SPECIAL CIRCUMSTANCE JUSTIFYING AN EXCEPTION”	6
III. THE OVERALL RECORD WAS NOT COMPREHENSIVE, NOR SUFFICIENT; SG’S REFERENCES TO THE EVIDENTIARY RECORD ARE VAGUE AND CONCLUSORY	8
A. EVEN CONSIDERING THE UPDATED REBUTTAL EVIDENCE, SG’S OVERALL SHOWING WAS INSUFFICIENT	9
1. Costs of Capital	9
2. Customer Growth and Utility Sales.....	10
3. Groundwater Quality Concerns.....	10
4. Working Cash.....	12
5. Condemnation Proceeds	12
6. O&M Expenses and A&G Expenses.....	12
7. Officers’ Salaries and Benefits	13
8. Balancing and Memorandum Accounts	13
9. Overall, What Does The Record Show?.....	13
IV. SG FAILS TO POINT TO EVIDENCE IN THE EXISTING RECORD THAT ITS PROPOSED CONSTRUCTION PROJECTS WERE NEEDED, REASONABLE OR JUSTIFIED	15
1. Wildermuth and LoGuidice.....	16
2. ORA, the City of Fontana, and the Fontana Unified School District	17
3. LoGuidice and Black.....	19

V.	FAR MORE THAN \$2.6 MILLION WAS OBTAINED FROM OUTSIDE SOURCES.....	23
VI.	SG DID NOT PROVE THE EXISTENCE OF ANY “SPECIAL CIRCUMSTANCES” TO JUSTIFY DEVIATION FROM STANDARD PRACTICE U-16.....	25

CERTIFICATE OF SERVICE

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of San Gabriel Water Company, Fontana District (U337W) for Authority to Increase Rates Charged for Water Service in its Fontana Water Company Division to Increase revenues by: \$11,573,200 or 39.1% in 2003, \$3,078,400 or 7.3% in 2004, \$3,078,400 or 6.8% in 2005, \$3,079,900 or 6.4% in 2006.

Application No. 02-11-044
(Reopened July 29, 2005)
(Rehearing)

In the Matter of the Application of San Gabriel Valley Water Company (U337W) for Authority to Increase Rates Charged for Water Service in its Fontana Water Company Division by \$5,662,900 or 13.1% in July 2006; \$3,072,500 or 6.3% in July 2007; and \$2,196,000 or 4.2% in July 2008.

Application 05-08-021
(Filed August 5, 2005)

**CLOSING REHEARING BRIEF
OF THE OFFICE OF RATEPAYER ADVOCATES**

I. INTRODUCTION

Pursuant to Rule 75 of the Commission's Rules of Practice and Procedure, and the schedule set by Administrative Law Judge (ALJ) Robert Barnett¹, the Office of Ratepayer Advocates (ORA) files this Closing Rehearing Brief in opposition to the Opening Brief on Rehearing Issues of the San Gabriel Valley Water Company, Fontana District (SG), filed on November 10, 2005.

¹ Parties requested an extension of time, which was granted by ALJ Lynn Carew. Closing Rehearing Briefs were due on December 5th, but are now due December 7th.

The main deficiency of the applicant's Opening Rehearing Brief is that it does not directly address the issues set forth in the Commission's decision on rehearing, D.05-08-041. Instead, SG has chosen for the most part to reargue the correctness of that decision, and thus restates much of the same arguments it made in its Application for Rehearing of D.05-08-041. The Commission should ignore those portions of SG's Opening Rehearing Brief, and restrict re-consideration of SG's legal arguments against D.05-08-041 to the Application for Rehearing.

SG goes on, as a secondary matter, to reargue its position that its "overall presentation" somehow met the "clear and convincing evidence" standard, if all of its initial showing and its "supplemental, updated, and rebuttal testimony and exhibits" are considered. (SG Opening Rehearing Brief, p.3.) Essentially, the company acknowledges that its initial showing was insufficient, by referring repeatedly to rebuttal evidence to shore up its bare initial showing. Only when the rebuttal evidence is considered can it even attempt to meet its burden of proof. However, SG's rebuttal evidence was provided to ORA, and the City of Fontana and the Fontana Unified School District, only 10 days before the evidentiary hearings. It is unfair and illegal for SG to present the substance of its case in chief via rebuttal exhibits. The law requires, and has always required, that an applicant provide sufficient evidence to justify a rate increase in its application. (D.05-08-041, pp. 8-11.)

Moreover, the existing record (rebuttal evidence included) is completely devoid of any studies demonstrating the need for the specific projects proposed by SG. The record is devoid of blueprints, engineering plans, environmental impact studies, cost effectiveness studies, etc., which are typically required by the Commission in order to justify an expensive new capital project. SG cannot offer these types of studies, because none were ever done.

Finally, it should be pointed out that the existing record is now over two years old. For example, at the time of the evidentiary hearings, the Fontana region had undergone several drought years. Last year was one of the wettest years in

history in the region. Essentially, the record is “stale” and SG’s past justifications for new projects should be re-evaluated in terms of the current precipitation levels, population growth, usage, etc. The prudent course would be to “start over”, by denying all of SG’s historical requests for capital projects and rate increases in its 2002 application, and create a new evidentiary record in its 2005 proceeding that reflects the current situation. It would not make sense to base a Commission decision addressing the current water needs of the Fontana region on evidence that is out-of-date. Therefore, ORA recommends deferring approval of all of SG’s capital projects until it has considered the new evidence submitted in the 2005 application proceeding, submitted on November 29th, 2005.

II. SG CANNOT DEMONSTRATE THAT ANY EXCEPTION TO THE EXISTING BURDEN OF PROOF IS WARRANTED

A. D. 05-08-041 Does Not Create A New Standard For Burden Of Proof

SG’s first argument in its Opening Rehearing Brief is that the standard for justifying a rate increase applied by the Commission, i.e., by “clear and convincing evidence” in its initial showing, was “unprecedented and unknown” during these proceedings. (SG Opening Rehearing Brief, p.4.) SG’s argument is not credible. Moreover, its argument is a rehash of the argument made in its Application for Rehearing of D.05-08-041, and should not be considered here.

SG finds fault with the Commission for citing to a relatively new case in describing the standard for burden of proof, *Southwest Gas Corporation* (2004) D.04-03-034, erroneously claiming that prior to *Southwest Gas* there was “no precedent requiring a utility to fully satisfy its burden of proof by any particular stage of a rate proceeding.” (SG Rehearing Brief, p.8.) This misrepresents the Commission’s decision in *Southwest Gas*, because at no time has the Commission ever held that an applicant could not supplement its initial filing. *Southwest Gas* does not create a “new” standard – it simply is the latest restatement by the

Commission of the long-standing rule that a utility must provide “clear and convincing evidence” in its direct showing to justify a rate increase².

Southwest Gas Corporation does not create a new “unknown” obligation – it merely reaffirms the burden of proof that has always existed in applications for rate increases. The Commission unambiguously held at page 9 of D. 05-08-041: “Recently, we reaffirmed that in a general rate case, a utility must prove its case ‘by evidence that is clear, explicit and unequivocal; that is so clear as to leave no substantial doubt’ or that is sufficiently strong to demand the unhesitating assent of every reasonable mind. [Citation]”. *Southwest Gas Corporation*, D.04-03-034. In D. 05-08-041, the Commission also cites cases from 1980, 1983, 1990, and to Public Utilities Code section 454(a). Thus, it is disingenuous (at best) for SG to claim this burden was “unknown” to SG at the time it filed its application. It is not reasonable for SG to believe it was acceptable to satisfy this burden in its rebuttal testimony and exhibits. Moreover, the Commission should be mindful that SG has been a regulated utility for many years in California. It cannot reasonably feign neophyte status with regard to the Commission’s regulatory requirements.

The burden of proof applied in D. 05-08-041 is not new or different than the burden of proof enunciated at several points during this case. The same burden of proof has been consistently applied throughout this proceeding. The burden of proof that ORA cited in its briefs was “clear and convincing evidence.” (ORA Opening Brief, p.4.) In the Proposed Decision by ALJ Patrick, the standard for the burden of proof was never mentioned. In D.04-07-034, the Commission refers to the applicant’s burden to support its request with a “clear and convincing showing”. (D. 04-07-034, p.51.)

Moreover, the cases cited by SG in its brief do not enunciate a different burden of proof. For example, SG cites to a case from 1938 that states:

² It seems clear from SG’s brief that the company believes it is consistent with the existing law to provide the bulk of its direct showing in its rebuttal testimony, which (in this case) was filed 10 days before the start of evidentiary hearings.

To meet the burden of presenting clear and convincing evidence of the need for a rate increase, the applicant must produce evidence having the greatest probative force. *Railroad Commission v. Pacific Gas and Electric Company* (1938) 302 US 388. (emphasis added)

The standard of proof from this 1938 case cited by SG (SG Opening Rehearing Brief, p.5) is the same as it is today. Ultimately, SG makes it clear that it is not really the standard that they think was mis-applied, but the way in which it was applied. The Company believes that it had fully justified its construction program, and is now aggrieved because D.05-08-041 re-opens the case in order to determine whether, in fact, SG met its burden of proof on every request.

Even if all of the evidence is considered (not just the initial showing), some of SG's requests for new construction (including several expensive projects), were not sufficiently supported. For example, the Company requested a \$6 million new office building, supported solely by the following: "Division personnel currently work out of six buildings at the company's Spring Street location, some of which date back to 1939. To improve productivity, and to provide a safer and more efficient work environment, the company plans to construct a new office complex in Test Year 2003". This "evidence" clearly falls below the standard of proof required for the Commission to approve such a request. Thus, the Commission is correct in its finding that some of the requests were unjustified, and the Commission should re-consider whether the Company met its burden of proof.

At pages 49 through 51 and 65, D.04-07-034 explicitly stated that San Gabriel failed to prove its case in its direct showing and failed to support its request with clear and convincing evidence. However, D.04-07-034 approves all of the items listed by the Company – thus, D.04-07-034 erred by approving new construction that was not supported by the record. (I.e., the Commission approved the request to purchase land for the construction of the \$6 million office building, even though the need for a new office building was not demonstrated.)

ORA notes that Rule 23 specifically states the requirements for an application for authority to increase rates. At no time does SG state that it was unaware of Rule 23.

Decision 04-07-034 states: “Much of the utility’s original application was supplemented, updated, or replaced by rebuttal testimony.” Apparently, SG believes that it was an acceptable practice for it to provide evidence in support of its application in its rebuttal testimony, which was filed *only 10 days before hearings*. SG’s eleventh hour effort to buttress its application with rebuttal testimony effectively makes it impossible for the Commission to properly evaluate the applicant’s showing. However, in D.04-07-034 the Commission also stated: “As San Gabriel is well aware, it has the burden to support its request with a clear and convincing showing – which it did not provide in this proceeding.” Thus, not only did the Company fail to meet its burden to provide documents and information pursuant to Rule 23 and the RCP (Rate Case Plan) in its initial showing, it failed throughout the proceeding to support its requests by a clear and convincing showing.

At page 9 of its Opening Rehearing Brief, SG cites to a “massive evidentiary showing”, that consisted of “all of the supplemental and updated testimony and exhibits”. As with its previous briefings, SG fails to point to anything specific in the record. Where is the evidence that supports any particular project? It is left to others to sift through the old record. SG should have presented it by now, if such evidence in fact existed.

B. Any “Delays And Complexity” Were Created By SG’s Obfuscation And Refusal To Provide Timely Responses To Data Requests; By Themselves, Delay And Complexity Do Not Constitute A “Special Circumstance Justifying An Exception”

SG next argues that “delays and complexity” make it necessary to lower the burden of proof. (SG Rehearing Brief, p.12.) This is nonsense.

Delays and complexities are characteristic of the Commission's general ratemaking process. The notion that delays and complexities constitute a justification for reducing the proof standard is without legal support. Nor is it sound policy to allow delays or complexity to undermine the long-standing rule that utilities must justify a rate increase request with "clear and convincing evidence". Otherwise, savvy lawyers would ensure that every GRC became so complex, and so ridden with delays, that the process of reviewing and deciding GRCs would become unduly burdensome and time-consuming. The standard for burden of proof would in effect cease to exist.

In any event, many of the delays were caused by SG itself. Its initial showing was so bare and insubstantial that the burden fell to the opposing parties to conduct extensive discovery. For example, ORA had to file a Motion to Compel to obtain requested tax returns from SG. In D.04-07-034, the Commission states: "Considerable hearing time and effort was expended by all parties in trying to ascertain the basis for San Gabriel's request for major plant additions." (D.04-07-034, p.49.) Thus, it was SG's own failure to provide sufficient evidence that caused the bulk of the delays.

Moreover, SG requested an interim rate increase, and the motion was denied. The Assigned Commissioner found that good cause did not exist to raise rates pending the Commission's final decision. (See Assigned Commissioner's Ruling On Motion Of San Gabriel Valley Water Company To Set Interim Rates, dated August 5, 2003.) In that decision, the Assigned Commissioner specifically pledged to issue a decision in a timely fashion (by the end of the year), which the Commission did. Thus, the Commission was aware of the delays and found that no interim rates were justified, and pledged to act expeditiously to issue final rates. SG cannot allege that either ORA or the other parties did anything to delay this proceeding, and thus the Commission has no cause to sanction the parties by lowering the burden of proof on SG.

SG also claims that the delays were caused by the replacement of the original assigned ALJ. (SG Rehearing Brief, p.12.) However, it makes no sense for the ratepayer to suffer the consequences of delays caused by the ALJ Division. Ultimately, the delays and complexity in the proceeding were normal and expected; such delays do not constitute “special circumstances” that warrant deviation from the standard of proof.

III. THE OVERALL RECORD WAS NOT COMPREHENSIVE, NOR SUFFICIENT; SG’s REFERENCES TO THE EVIDENTIARY RECORD ARE VAGUE AND CONCLUSORY

SG next argues that the record contained “massive amounts of supporting data”, and that its “updated and rebuttal evidence” somehow met the standard of “clear and convincing evidence”. (SG Rehearing Brief, p.13.) However, SG’s citations to the record are vague and non-specific.

Moreover, it is only by expressly violating the prohibition contained in D.05-08-041 and considering updated rebuttal evidence provided 10 days before the hearings can SG attempt to somehow justify its huge rate increase request. Decision 05-08-041 expressly finds that it is existing, long-standing law that an applicant must provide sufficient evidence in its direct showing. D.04-07-034 explicitly states that San Gabriel failed to prove its case in its direct showing and failed to support its request with clear and convincing evidence. The Commission cites to *Re Schedule for Processing Rate Case Applications by Water Utilities* (1990) 37 Cal.P.U.C.2d 175 (D.90-08-045), for the proposition that a utility must present the required documentation at the time of filing its application for a rate increase. SG cannot plausibly argue that this was an “unknown” burden during these proceedings.

It should be noted that SG does not attempt to cite to its initial showing to justify its request for a rate increase. This would be impossible, in any event. SG does not and cannot argue that its initial showing was sufficient. However, this is

exactly what D. 05-08-041 says is required. On this basis alone, SG's attempt to justify the substantial rate increase request falls short.

**A. Even Considering The Updated Rebuttal Evidence,
SG's Overall Showing Was Insufficient**

ORA vehemently objected to the admission and consideration of "massive amounts" (SG's own words) of new data contained in the rebuttal testimony served only 10 days prior to the hearings.

However, even considering the data that was provided in the rebuttal testimony, the overall record still does not justify the requested rate increase by a "clear and convincing" margin.

SG is guilty of providing vague, non-specific references in support of its case. Basically, nothing in its Opening Rehearing Brief cites to the kind of detailed studies or analysis that are typically required by the Commission when considering expensive new capital projects. (See ORA's Opening Rehearing Brief for examples of the kind of data typically considered, pp.13-14.) Starting at page 14, SG makes an unsuccessful attempt to cite to specific testimony that supports its capital improvements. These references are addressed in order below.

1. Costs of Capital

At page 14, SG cites to testimony from its President, Treasurer, and an outside financial expert on financial risk and costs of capital issues in support of an increased rate of return of 12.25%. As pointed out in ORA's Opening Rehearing Brief, SG's overall rating would be AA (if it were rated), which indicates that it is a financially healthy company. It has not had any trouble borrowing money and has not demonstrated to the Commission that it is losing money. The record demonstrates that it had paid out dividends to its shareholders in each of the preceding three years. (See Hearing Transcripts, p. 496, for example.)

SG cites to the testimony of its President and Treasurer. Yet, at no time does SG attempt to describe the "unique risks" it claims that it faces, or how its

testimony proved that an enhanced rate of return was justified. (SG Rehearing Brief, p. 15.) It falls to the opposing parties to sift through SG's exhibits looking for clues.

SG makes only vague, non-specific assertions without reference to page numbers, or without any supporting arguments. SG has the burden to demonstrate by clear and convincing evidence that higher rates of return on capital were justified – something it has utterly failed to do with the testimony it cites. For this reason, SG fails to meet its burden and its request for higher rates of return should be denied.

2. Customer Growth and Utility Sales

At page 15, SG cites to testimony by its Vice-President Frank LoGuidice and Director of Rates and Revenue Daniel Dell'Osa for the proposition that it provided “realistic forecasts of customer growth”. Again, there are no specific references to pages, exhibits, data, etc.

The real issue here is whether the company's water production capacity was/is sufficient to meet the forecasted customer growth. As discussed at length in ORA's Opening Rehearing Brief (pp.15-16), the record demonstrates that only a modest increase in additional capacity is necessary to accommodate the customer growth predicted. Thus, SG's citation to its predictions of customer growth do not justify its huge rate increase request.

3. Groundwater Quality Concerns

SG cites generally to several exhibits, consisting of the entire testimony of Messrs. LoGuidice, Dell'Osa, Black, and Wildermuth, for the proposition that that SG is “compelled to make substantial capital investments to meet future water supply needs”. (SG Opening Rehearing Brief, p.15.) Again, the citations are vague and there is no supporting argument.

Moreover, it is true that there were some concerns about groundwater contamination during these proceedings. ORA noted this in its Opening

Rehearing Brief and indeed throughout these proceedings. What is lacking is any evidence of a plan by SG to consider cost-effective alternatives and to present a feasible and reasonable plan to deal with the groundwater contamination. Lacking any plan, it fell on the City of Fontana, the Fontana Unified School District, and ORA to attempt to develop reasonable alternatives. But who carries the burden here? Should not SG be required to provide clear and convincing evidence that it has chosen the most reasonable and cost-effective water quality remediation plan, after considering many alternatives? SG's vague citations to the record do not carry its burden to prove by clear and convincing evidence that "substantial capital investments", specifically the ones proposed by SG, are just and reasonable. D.05-08-041 requires such evidence, and SG fails to deliver.

SG further cites to the testimony of Messrs. LoGuidice and McGraw (p.15), to justify the need for other capital projects, such as new reservoirs and booster pump stations. Again, the references are vague and non-specific. ORA pointed out, in its Opening Brief filed in 2003 that much of the difference in estimates for plant additions came from false representations by SG regarding construction projects that had not actually been built. Specifically, SG reported that it had built plant when in fact it did not. (See ORA Opening Brief, pp.19-21.)

In addition, much of the additional plant was necessitated by SG's ambitious list of capital projects. However, if there is no "crisis" in water supply, there is no need to build so much additional new plant. The record demonstrates that SG could (in 2003) continue to reliably supply its customers with clean water without the substantial new plant additions.

In any case, the summary on page 15 of SG's Opening Rehearing Brief is insufficient to meet its burden of "clear and convincing evidence". It is vague and non-specific. It falls to the parties or the Commission to sift through the company's exhibits to see if there is any support for the fallacy that it had severe shortages due to groundwater quality concerns.

4. Working Cash

In support of its estimate of a working cash allowance, SG cites to the testimony of Mr. Batt. (SG Rehearing Brief, p.15.) However, at no time does SG address the main issue here – that Mr. Batt acknowledged during cross-examination that he did not follow Commission Standard Practice U-16. Again, the citation is vague and does not provide clear and convincing evidence that the company correctly calculated its needed working cash allowance.

5. Condemnation Proceeds

During this proceeding, SG's accounting methods for the proceeds it received from its inverse condemnation lawsuits were never clear. ALJ Patrick declined to decide the issue and deferred a decision until after an audit could be completed. Now, that audit has been completed. It is now clear that far more than \$2.6 million in condemnation proceeds should be removed from ratebase, in that far more than \$2.6 million has been received by SG from outside polluters and reinvested in plant that was put into ratebase. SG's non-specific citation to the testimony of Mr. Batt regarding this issue does not overcome the Water Division's audit, nor does it adequately explain why SG is attempting to have ratepayers pay for the costs of treatment facilities built with condemnation proceeds received from outside polluters.

6. O&M Expenses and A&G Expenses

SG cites to the testimony of Messrs. Whitehead, LoGuidice, Nicholson, and Dell'Osa, regarding the operation and maintenance expenses and the administrative and general expenses. Again, the citation is only by exhibit number. The general citations do not direct the reader to an explanation of how SG arrived at its O&M forecasts, or why a large rate increase is needed to cover those expenses.

7. Officers' Salaries and Benefits

SG offers only the barest citation to the testimony of Messrs. Nicholson and Batt to justify the proposed large increases to its officers' salaries and benefits. As discussed in ORA's Opening Rehearing Brief, the issue here was whether it is more reasonable to adopt salary figures based on a comparison to other large gas and electric utilities, or whether (as ORA proposed) it is more reasonable to base the salaries on a comparison to other water utilities. (See ORA's Opening Rehearing Brief, pp.9-10.) SG's bare citation does not provide any analysis or evidence in support of large salary increases for its officers.

8. Balancing and Memorandum Accounts

At page 16, SG cites to the testimony of Mr. Dell'Osa in support of its request to amortize its balancing and memorandum accounts. In D.05-08-041, the Commission held that amortization of SG's Balancing and Memorandum Accounts should occur after completion of the audit, specifically after the correct amount in the companies water quality memorandum accounts is determined. That issue has not been decided yet. Therefore, it is premature for SG to cite to the testimony of Mr. Dell'Osa as evidence in support of its amortization of those accounts. The Commission has already decided to delay amortization of those accounts, and that issue is not one to be decided at this time.

9. Overall, What Does The Record Show?

Exhibit 54, the summary list of proposed capital projects, was not introduced until *the evidentiary hearings*. This list was requested by ALJ Patrick during the hearings, and was supposed to represent a list of prioritized projects. However, the list departs from SG's initial application. Some items were added, some deleted, and the price on some was changed. (See the City of Fontana's Opening Rehearing Brief, p.15, for a detailed description of Exhibit 54.) SG does not argue, and has never argued, that there was any specific justification for any particular project. SG never provided any detailed studies of the cost-

effectiveness of a particular project, or a study of alternatives. SG does not provide that kind of analysis now.

Decision 05-08-41 disapproves of the rate base cap, and holds that each of the projects proposed by SG must be reviewed by the Commission, and before the Commission gives its approval must be found to be just and reasonable. SG never provided that kind of specific analysis – for the projects listed on Exhibit 54, or for any other expensive new projects. SG’s Opening Rehearing Brief does not provide an itemized list of projects along with citations to where in the record the company justified the need for the particular project. SG’s Brief makes no attempt whatsoever to go through the items on Exhibit 54 and provide data or evidence in support of each one. The record does not support such an attempt.

Instead, SG merely argues that there is a general need for the items on Exhibit 54. While ORA has acknowledged that there were some water quality concerns, it was never conclusively proven that SG could not meet all of its customer’s water needs³. In fact, the record proves the opposite – that SG at all times met the demands of its customers with its existing capacity. (Exhibit 49, p.116.) Thus, even in a general sense, the existing record does not justify the substantial additions to plant.

ALJ Patrick gave the company “carte blanche” to build the items on Exhibit 54, including the discretion to add or remove items from the list. The Commission found that this was not legal – ultimately, each project has to be justified by clear and convincing evidence. The record simply does not contain such a justification on a project-by-project basis.

³ SG points out that the Commission considers contamination cleanup a matter of the highest priority. (SG Opening Rehearing Brief, p.17.) However, SG failed to present any analysis of reasonable alternatives, nor any studies concerning the cost-effectiveness of its proposals. In fact, there was no “plan” at all. SG simply proposed a massive amount of new spending.

IV. SG FAILS TO POINT TO EVIDENCE IN THE EXISTING RECORD THAT ITS PROPOSED CONSTRUCTION PROJECTS WERE NEEDED, REASONABLE OR JUSTIFIED

Interestingly, SG states that it “did not seek or request ‘pre-approval’ of any changes or substitutions in its planned construction program.” (SG Opening Rehearing Brief, p.20.) If this is the case, then apparently SG does not seek nor want the discretion to make changes or substitutions to Exhibit 54. Thus, the Commission can safely dispose of the issue. Not even SG itself seeks to have “carte blanche” to build whatever its wants within the 10% cap. Thus, ORA and SG appear to agree that SG cannot obtain “pre-approval” of unknown projects. (The argument that SG makes at page 21, that D.05-08-041 is somehow “confused”, is therefore moot.) Apparently, any reference to permitting SG to “change or substitute” projects on Exhibit 54 without Commission review can now be safely deleted.

However, SG makes a logical error. Somehow, SG believes that Finding of Fact No. 8 found that SG’s unknown future additions were found to be justified by the Commission. (SG Opening Rehearing Brief, p.21.) D.05-08-041 corrects this error, but SG still relies on the illogical premise that the Commission can look at evidence and find it to be persuasive, when the project is “unknown” at the time.

Sorting through SG’s twisted logic is difficult, but ultimately unwinding the twists is unnecessary because it is best left to the Application for Rehearing. The real issue is whether the known projects, those proposed during these proceedings as summarized on Exhibit 54, are supported by clear and convincing evidence.

SG also appears to argue that its overall construction budget was found to be “justified”. (SG Opening Rehearing Brief, p.23.) However, this logic is again flawed because the construction budget was a fiction – the budget was never calculated based on actual forecasts and estimates, much less real data. Instead, the construction budget was essentially the 10% rate base cap. There was never

any “plan”. ALJ Patrick never properly applied the standard of proof, and granted huge rate increases without clear and convincing evidence.

SG is mistaken that its proposed plant additions are justified and reasonable. (SG Opening Rehearing Brief, p.20.) SG’s muddy arguments notwithstanding, it remains that one of the main issues on rehearing is whether SG can provide evidence that its proposed list of projects is “needed, reasonable and justified”. (Ordering Paragraph 2, D.05-08-041.) SG may not like it, but that is the scope of this proceeding. Whether D.05-08-041 is correct or not must be left to the Application for Rehearing.

SG argues endlessly that “for all the reasons expressed in the testimony and cross-examination” of its witnesses, SG “justified its proposed construction program”. (SG Opening Rehearing Brief, p.24.) Again, there is no citation to the record, except for vague references. SG cites to its Opening and Reply Briefs that were filed after the evidentiary hearings in 2003, but the evidence cited in those briefs has already been found insufficient by D.05-08-041.

Below, ORA responds to the vague references to the record made at pages 25 to 41 of SG’s Opening Rehearing Brief.

1. Wildermuth and LoGuidice

SG cites to the testimony of Messrs. Wildermuth and LoGuidice for the proposition that there are special concerns regarding groundwater contamination. (SG Opening Rehearing Brief, p.25.) ORA acknowledges that there are some concerns. However, there is no plan described by Messrs. Wildermuth and LoGuidice to address the problem. These witnesses only discuss the proposed construction plans in vague terms, never actually offering any specific justification. For example, these witnesses never discuss any of the following:

- SG’s existing water production capacity;
- SG’s existing reservoir capacity;
- SG’s customers’ water usage in terms of MGD;

- SG’s shortfall in meeting that usage;
- The current levels of precipitation and how that affects the supply and demand;
- The current losses due to groundwater contamination;
- What efforts the company has made already to date to replace water production capacity to make up the shortfall;
- A plan for the future;
- How each new construction project fits in to an overall plan;
- Where, when, how, and why each new construction project will be built.

Basically, Mr. Wildermuth only testified in gleaming generalities that the customers’ needs are “increasing steadily” and that some of its supply has been “increasingly contaminated”. (SG Opening Rehearing Brief, p.25.) In SG’s own words, Mr. Wildermuth offered only “cautionary notes” about the problems in the Chino Basin. SG does not cite to any specific data from Mr. Wildermuth – in fact, there was none.

Mr. LoGuidice merely describes the massive amounts of new plant proposed by the company. SG’s proposed construction program (listed in summary form on Trial Exhibit 54) includes building seven new water production wells, seven booster pumping stations, six new reservoirs, related piping and equipment, and adding the necessary personnel to operate these wells and equipment. (SG Opening Rehearing Brief, p. 26.) Where are each of the seven new wells going to be built? How much new capacity would each provide? What would the total amount of new capacity be, if all seven are built? Is that enough? Are there reasonable, less costly alternatives?

2. ORA, the City of Fontana, and the Fontana Unified School District

SG next attacks the opposition by ORA, the City of Fontana, and the Fontana Unified School District to the “major elements of San Gabriel’s

construction program”. (SG Opening Rehearing Brief, p. 27.) This criticism is unfair, because the parties attempted to make a reasonable attempt to answer the questions listed above about the company’s existing capacity, reservoirs, customer growth, needs, etc. The company never provided data to the parties upon which to make an accurate assessment and to create a reasonable plan for future plant additions.

The Commission stated: “Considerable hearing time and effort was expended by all parties in trying to ascertain the basis for San Gabriel’s request for major plant additions.” (D.04-07-034, p.49.) ORA believes that an evidentiary basis for SG’s rate increase request was never provided. The Commission’s decision on rehearing, D.05-08-041, provides another opportunity for SG to provide that data, but again, SG fails to deliver. While ORA’s reasons for recommending a modest construction program⁴ may not be perfect, ORA attempted to make a reasonable recommendation given the data that was provided.

In any event, the burden of proof is ultimately on the applicant to provide sufficient justification for its program. ORA believes that there are too many unanswered questions. These questions (existing capacity, reservoirs, customer growth, needs, etc.) are typically answered by the company, in studies regarding the need and cost-effectiveness of its capital projects. (See ORA’s Opening Rehearing Brief, pp.13-14.) Neither Mr. Wildermuth’s nor Mr. LoGuidice’s testimony answer those questions.

Essentially, the burden fell on ORA, the City, and the School District to present a common-sense reasonable alternative plan to address the company’s future needs. The company’s plan consisted of a massive amount of new spending, without any details about what, where, when, and why for each well, reservoir, etc.

⁴ ORA recommended approving rate recovery for the three new wells and two new reservoirs already built by SG in the two years previous to filing the application, and approving one additional new well and one additional new reservoir. (Exhibit 17, pp. 59-60, and 83-84.)

While ORA believes the evidence justifies a modest construction program, it should be pointed out that the evidence is now stale. It would be prudent to reject all of the company's requests that date back to this application, A.02-11-044, and instead require updated evidence of the existing capacity, reservoirs, customer growth, needs, etc. (especially, the Commission should consider that the drought conditions that existed in 2003 have ceased). After the Commission receives updated documentation from SG, (in the company's current GRC proceeding, A.05-08-021), the Commission should require SG to provide an updated list of proposed capital projects designed to address the company's future needs.

3. LoGuidice and Black

From page 30 to 40 of SG's Opening Rehearing Brief, SG summarizes some of the testimony from Messrs. LoGuidice and Black. SG again fails to provide any specifics. Messrs. LoGuidice and Black testify in broad generalities, making statements about "increasing groundwater contamination" and "diminished supply of some sources due to the current drought." (SG Opening Rehearing Brief, p. 31.) However, Mr. LoGuidice has no idea about the company's future needs, or how much capacity would be built under the company's plan.

Most of Mr. LoGuidice's testimony was based on the assumption of a continuing drought. (See footnote 62, SG Opening Rehearing Brief, p. 31.) Is it wise to base the Commission's approval or disapproval of the company's construction program on the assumption of a drought continuing, when that is no longer the case?

SG points out that due to drought and contamination concerns, some capacity had been lost. However, Mr. LoGuidice never explains why the projects on Exhibit 54 are justified. There is no detailed description of the projects, no explanation of how those projects will be built, how much new capacity each would provide, or how that proposed new capacity is necessary to make up an

existing shortfall. Instead, Mr. LoGuidice makes broad statements like “contamination compounded by the continuing drought confronts the Company with significant water supply challenges that will continue...” (SG Opening Rehearing Brief, p. 31.)

It is true that some water production capacity was lost due to drought and contamination. However, Mr. LoGuidice testified that the company’s production capacity was 76 MGD (million gallons per day), and that the maximum demand (in 2002) was 60 MGD. (Trial Exhibit 49, p.116.) So, despite Mr. LoGuidice’s testimony that (for example) the Lytle Creek Region had lost 6,400 gallons per minute of pumping capacity, or that during the summer of 2003 the Sandhill Water Treatment Plant went from 3,000 to 1,000 gallons per minute during the summer months, it is impossible to determine the impact of Mr. LoGuidice’s testimony. Mr. LoGuidice’s broad statements about capacity being lost were not helpful to any of the parties at the time of the hearings⁵, nor are they helpful now in assessing the current needs of the company. It is difficult to reconcile Mr. LoGuidice’s testimony about lost capacity with his testimony that the company had 76 MGD of production capacity, which was adequate to cover the peak demands in 2002-2003.

For example, the company proposes building an expansion to the Sandhill Water Treatment Plant – it is proposed in both in Exhibit 54, and in SG’s current GRC. However, what is the current level of production at the Sandhill plant? Is it still 1,000 gpm? Has the company built any new wells, or otherwise increased its capacity since 2003? What is the current level of usage, and does building the Sandhill plant address the needs? These are the kinds of questions that cannot be answered in this proceeding, which is why the prudent course is to reject all of the company’s requests on Exhibit 54.

⁵ Exhibit 11, the Testimony of Frank LoGuidice, was one of the exhibits provided in the rebuttal testimony, 10 days before the hearings started. Thus, ORA did not have the time to make follow-up data requests to determine the factual underpinning of Mr. LoGuidice’s vague statements.

During Mr. LoGuidice's deposition, he testified that: 1) he did not know the peak demand; 2) during peak demand, he did not know how much reserve water (from reservoirs) would be drawn down; 3) however, he knew that at no time did the company ever fall below its minimum water storage requirements. (Trial Exhibit 49, pp.116-120.)

Mr. LoGuidice discussed certain projects that, if constructed, would produce more water. (SG Opening Rehearing Brief, p. 33.) However, at no time is there an explanation of why these projects were necessary. There was a general discussion of "diminishing supply", but there was never any analysis done of how the increased amount of water from a particular project would address the shortages, if there were any shortages. ORA's position is that the applicant must prove by clear and convincing evidence that each of the expensive capital projects proposed by SG is justified – it is not sufficient to provide a general, over-arching justification (i.e., that there are some concerns due to contamination and drought) for the company's entire budget.

Mr. Black's testimony is even more vague and general. Moreover, some of his statements are actually false. SG cites to Mr. Black's false testimony (that seven contaminated wells have been shut down) at page 35 of its Opening Rehearing Brief, as support for their construction program. Mr. Black testified that the company had lost production from seven wells due to contamination. However, during the deposition of Frank LoGuidice, SG's Vice President of Engineering and Operations, he indicated that only wells F3A and F25A are totally shut down, and that wells F4A, F17B, F17C, F18A and F35A are available to be turned on as needed. (Exhibit 49, p.31.) Mr. LoGuidice indicated during his

deposition that the contaminants are below the “action levels”⁶. Thus, only two of the five are in fact shut down (as of 2003).

Mr. Black testifies that there is “absolutely no cushion for the loss of any well”, and yet provides no specifics about the size of the “cushion”, or the amount of water in reservoirs, or the amount of water available from emergency sources.

Counsel for the Fontana Unified School District performed an accurate recital of the “cushion” that Mr. Black describes – which is much more specific than the meaningless testimony from Mr. Black. It is worth reviewing the FUSD’s analysis, at page 5 of its Opening Rehearing Brief and page 11 et seq. in its 2003 Opening Brief.

It is important to note that an *independent source* reviewed the company’s water production capacity during a drought year and found that the company had more than enough water.

FUSD’s Opening Rehearing Brief recounts: “The state independently analyzed customer demand and supply capacity of the Water Company. The State reported the 2001 average daily water usage for all customers at 38 million gallons a day (“MGD”) and the maximum daily water usage at 60.9 MGD (see Exhibit 73 p. 2). The total water production of the Water Company, excluding wells out of service due to pollution or otherwise, measured 93.5 MGD (see Exhibit 73 p. 4). The report concluded SGVWC source capacity exceeded customer demand, stating:

The Company also has four wells, F-10A, F-17C, F-25A and F-49A, not in service at this time. Well F-49A is awaiting CEQU clearance, and has not yet been permitted by the Department. With these four wells offline, the Company has an available source capacity

⁶ It should be noted that “action levels” (which require customer notification), unlike MCLs (maximum contaminant levels), are not legally enforceable. (See Health and Safety Code section 116455.) Therefore, the fact that the perchlorate concentrations in some of the company’s wells have reached “action levels” does not provide a legal basis to shut down a well or to require water treatment. The company never provided evidence that either perchlorate or nitrate levels had exceeded the MCL standard (much less the “action levels”).

of 93.5 MGD, including the 20 MGD from the treatment plant. With just the available wells operating alone, the total source capacity is 73.5 MGD (51,046 GPM), which is more than adequate to meet the 2001 Maximum Day Demand of 60.9 MGD (42,292 GPM). The average maximum day demand for the last three years is 60.7 MGD. The Company has enough redundant source capacity to meet expected demands. [Emphasis added]

(Exhibit 73, p.4.)”

Mr. Black’s testimony that the total production capacity is 56.3 MGD is befuddled and wrong. (SG Opening Rehearing Brief, p.35.) For example, Mr. Black ignores the new treatment facilities built at F17B and C, and ignores emergency water available from Rialto and West San Bernardino Valley. If all the available water is counted, the company’s total production capacity is 76 MGD. (Exhibit 49, p.116.) The average daily usage is only 38 MGD, and the peak demand on the hottest driest day in summer is (reported by SG) about 60 MGD. Mr. Black also neglects to count the approximately 30 million gallons of water in its reservoirs.

In conclusion, Mr. LoGuidice and Mr. Black were unable to provide to the kind of “clear and convincing evidence” needed to justify raising rates to fund a massive construction program. More importantly, they did not provide specifics as to the need, cost, reasonableness, feasibility, etc. of any particular project.

V. FAR MORE THAN \$2.6 MILLION WAS OBTAINED FROM OUTSIDE SOURCES

The company’s position on this issue is, and has always been, impossibly tangled. However, it does not need to be so. The Commission ordered the Water Division to perform an audit, and that audit is now complete. The audit finds that SG received a total \$13.9 million in net proceeds relating to its Fontana Division, and that those proceeds should be allocated to ratepayers. The audit report also finds that SG’s claim that the proceeds were reinvested in plant cannot be

substantiated, considering that over the same time period (1996-2004) reviewed by the audit SG paid over \$40.8 million in dividends to its private shareholders⁷. SG's Opening Rehearing Brief repeats the claim that the company "accounted for those proceeds" (p.44), but it is not at all clear what happened to the \$13.9 million. The simple (and correct) solution is to follow the recommendation made by the Water Division and allocate the total proceeds received from outside sources to the ratepayers; logically, the best way to do that is to treat the money as CIAC (contributions in aid of construction), since the evidence indicates the proceeds were probably used to build treatment facilities, such as those at Plant F10.

Trial Exhibit 95 is a job cost worksheet obtained from SG by ORA. It is an example of a typical work order that shows construction at Plant F10⁸. The "responsible party" for this work order (Exhibit 95) is listed on the work order itself as "SGV Water Company", even though the work order is clearly for Plant F10. This typical work order appears to show that the facilities at Plant F10 were company-funded; but the record overwhelmingly shows that the County of San Bernardino funded the facilities at Plant F10. To ensure that SG does not receive "double-recovery" from the ratepayers and outside polluters for the costs of contamination treatment, the logical course is to follow the Water Division's recommendation and allocate the proceeds to the ratepayers.

⁷ Water Division, Audit Report on The Results Of Examination Of San Gabriel Valley Water Company, Audit Pursuant to D.04-07-034, August 2005, p. 5.

⁸ Plant F10 was the subject of a lawsuit between SG and the County of San Bernardino. The settlement agreement is part of the record. (Exhibit 24.) Attachment A to Exhibit 24 shows that the County specifically paid for remediation facilities at Plant F10. Attachment E to Exhibit 8 also shows that money was received from the County of San Bernardino and reinvested in utility plant.

VI. SG DID NOT PROVE THE EXISTENCE OF ANY “SPECIAL CIRCUMSTANCES” TO JUSTIFY DEVIATION FROM STANDARD PRACTICE U-16

Specifically, D.05-08-041 requires SG to provide evidence of “special circumstances” in this case that warrant a deviation from the Commission’s Standard Practice U-16 for calculation of working cash. The only piece of evidence cited by SG is a Stipulation for Settlement from a GRC from over 10 years ago (D.92-04-032). In that case, ORA entered a settlement agreement with SG that allowed SG to make certain deviations. However, settlement agreements have no precedential value, and ORA did not make any similar agreement in this case.

In fact, in the previous SG Fontana Division GRC, Re: Application of the San Gabriel Valley - Company for authority to increase rates, D.95-06-017, (1995), the parties entered into a settlement agreement that included the following: “7.03 The Parties agree that the amount of Working Cash to be included in rate base should be calculated according to the Commission’s Standard Practice U-16, Determination of Working Cash Allowance, and based on the adopted revenues and expenses in this proceeding.” Thus, SG’s statement that it “consistently has been in compliance with Commission policy” with regards to working cash is simply not true. (SG Opening Rehearing Brief, p.52.)

Mr. Batt testified that he did not include customer deposits, insurance reserves, deferred credits, accrued vacation and sick leave, amounts withheld from employees, taxes accrued, and accounts payable in his calculation of working cash; he used a “different method”. (Trial Transcripts, 437:4-26.) There can be no dispute that SG did not follow U-16.

SG finds fault with ORA’s calculation, but it is not ORA’s burden to provide the justification for the deviation from the standard practice. Therefore, ORA recommends that the Commission order SG to submit a correct calculation

of working cash in accordance with Standard Practice U-16, and submit it for review prior to being accepted in its current GRC.

Respectfully submitted,

/s/ TRAVIS T. FOSS

Travis T. Foss
Staff Counsel

Attorney for the Office of
Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1998
Fax: (415) 703-2262

December 7, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document “**CLOSING REHEARING BRIEF OF THE OFFICE OF RATEPAYER ADVOCATES**” in **A.02-11-044**.

A copy was served as follows:

[**X**] **BY E-MAIL**: I sent a true copy via e-mail to all known parties of record who have provided e-mail addresses.

[] **BY MAIL**: I sent a true copy via first-class mail to all known parties of record.

Executed in San Francisco, California, on the **7th** day of **December, 2005**.

/s/ Rebecca Rojo

Rebecca Rojo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.